



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2004

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-2888

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199098.

The Texas Department of Criminal Justice (TDCJ) received a request for information sent from the Texas Department of Criminal Justice to the Texas Board of Pardons and Paroles regarding a death row inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the confidentiality provisions of section 508.313 of the Government Code. In pertinent part, section 508.313 states:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

...

- (c) The department, on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:

...

- (2) a member of the board or a parole commissioner[.]

You state the requested information is records about a death row offender subject to executive clemency that were obtained and are maintained by the Parole Division of TDCJ. The transfer of these documents by TDCJ to the Texas Board of Pardons and Paroles does not affect the confidentiality of the information. *See* Gov't Code §508.313(c)(2). We note that section 508.313 specifically identifies those entities to which the information at issue may be released. The requestor has not shown he is authorized to obtain the submitted information under section 508.313(c). Section 508.313 does not apply to information that must be made public under section 552.029 of the Government Code. Gov't Code §508.313(f). Under section 552.029, basic information regarding incidents involving the use of force is subject to required disclosure. Basic information under section 552.029 includes the time and place of each incident, the names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Within the submitted information, which we have marked, are documents relating to an incident where force was used against the named inmate. The basic information in these documents must therefore be released to the requestor under section 552.029. The remaining submitted information is confidential under section 508.313(a) and must be withheld under section 552.101.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

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<sup>1</sup> Because we are able to resolve this matter under section 552.101, we do not address your other claims.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

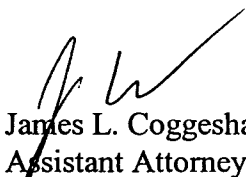
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sdk

Ref: ID# 199098

Enc. Submitted documents

c: Mr. Ward Larkin  
15327 Pebble Bend Drive  
Houston, Texas 77068-1839  
(w/o enclosures)